

§ 775.13

may be allowed where the operation has a valid permit issued under section 510 of the Act.

(3) The hearing shall be conducted under the following conditions:

(i) The hearing authority may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

(ii) A verbatim record of each public hearing required by this section shall be made, and a transcript made available on the motion of any party or by order of the hearing authority.

(iii) Ex parte contacts between representatives of the parties appearing before the hearing authority and the hearing authority shall be prohibited.

(4) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal of the decision.

(5) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the regulatory authority.

(c) *Administrative hearings under Federal programs and Federal lands programs.* All hearings, under a Federal program for a State or a Federal lands program except as may be modified by a cooperative agreement pursuant to part 745 of this chapter, on an application for approval of exploration, a permit for surface coal mining and reclamation operations, permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights shall be of record and governed by 5 U.S.C. 554 and 43 CFR part 4.

§ 775.13 Judicial review.

(a) *General.* Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative hearings as

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an objector may appeal as provided in paragraph (b) or (c) of this section if—

(1) The applicant or person is aggrieved by the decision of the hearing authority in the administrative hearing conducted pursuant to § 775.11 of this chapter; or

(2) Either the regulatory authority or the hearing authority for administrative review under § 775.11 of this chapter fails to act within applicable time limits specified in the Act, this chapter, or the regulatory program.

(b) *Judicial review under State programs.* The action of the hearing authority identified in paragraph (a) of this section shall be subject to judicial review by a court of competent jurisdiction, as provided for in the State program, but the availability of such review shall not be construed to limit the operation of the rights established in section 520 of the Act.

(c) *Judicial review under Federal programs and Federal lands programs.* The action of the hearing authority identified in paragraph (a) of this section is subject to judicial review by the U.S. District Court for the district where the coal exploration or surface coal mining and reclamation operation is or would be located, except for judicial review of State regulatory authority actions in a State court of competent jurisdiction as may be provided for in a cooperative agreement, in the time and manner provided for in section 526 (a)(2), (b) and (e) of the Act. The availability of such review shall not be construed to limit the operation of the rights established in section 520 of the Act.

PART 777—GENERAL CONTENT REQUIREMENTS FOR PERMIT APPLICATIONS

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AUTHORITY: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*